MINUTES
of the
SIXTH MEETING
of the
MORTGAGE FINANCE AUTHORITY ACT
OVERSIGHT COMMITTEE

November 3, 2010
Hotel Albuquerque
800 Rio Grande Boulevard NW
Albuquerque, New Mexico

The sixth meeting of the Mortgage Finance Authority Act Oversight Committee was called to order by Representative Jose A. Campos, chair, on November 3, 2010 at 9:15 a.m. at the Hotel Albuquerque in Albuquerque, New Mexico.

Present
Rep. Jose A. Campos, Chair
Sen. Nancy Rodriguez, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano
Rep. Ernest H. Chavez
Sen. Cisco McSorley

Absent
Sen. Eric G. Griego
Rep. Joni Marie Gutierrez

Advisory Members
Sen. Rod Adair
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Thomas A. Anderson
Rep. Andrew J. Barreras
Rep. Dennis J. Roch
Rep. Benjamin H. Rodefer
Sen. Sander Rue

Staff
Kim Bannerman, Legislative Council Service (LCS)
Claudia Armijo, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and written testimony are in the meeting file.

Wednesday, November 3

Representative Campos welcomed committee members and guests to the meeting, and the members introduced themselves. He then asked Jay Czar, executive director of the Mortgage Finance Authority (MFA), to speak to the members and guests.

Governor's Housing Summit — Content Highlights and Keynote Speakers

Erin Quinn, senior policy and program adviser for the MFA, joined with Mr. Czar in welcoming the members and guests to the meeting, which was being held during the Governor's Housing Summit. Mr. Czar explained that the summit is a biennial event held in the hopes that attendees will gain knowledge, make valuable connections and renew their commitment to providing high-quality affordable housing opportunities for the residents of New Mexico.

Ms. Quinn told the members that some of the most knowledgeable individuals and experts in the housing industry would be sharing their ideas and knowledge with the attendees. She added that the topics for the various housing summit breakout sessions would range from deal structuring to demographics. She advised the members that they were all registered and were welcome to attend any of the sessions that might be of interest to them.

Ms. Quinn identified the keynote speaker for the first day of the summit as Nicolas P. Retsinas, a senior lecturer in real estate at the Harvard Business School. She added that Mr. Retsinas teaches courses in housing finance and real estate in emerging markets. She said the keynote speaker for the following day would be Will Bowen, leader of Christ Church Unity in Kansas City, Missouri. She noted that prior to his leadership in the church, Mr. Bowen worked in radio and that he is an award-winning sales and marketing lecturer.

Before concluding their opening remarks, both Mr. Czar and Ms. Quinn again invited and encouraged the committee members to attend any sessions or other activities offered during the housing summit.

Proposed Audit review of Conflict-of-Interest Procedures

Gina Hickman, deputy director of finance and administration for the MFA, and Marjorie Martin, MFA general counsel, addressed committee members regarding the proposed audit or review of the MFA conflict-of-interest procedures. Ms. Hickman began with a brief background summarizing the discussions at previous MFA meetings that led to the proposed review. She also reminded the members of the details included in the proposals the MFA received from the law firm and accounting firms that presented proposals for audit and review services of the MFA's conflict-of-interest procedures.

Ms. Hickman told the members that the MFA has already begun its annual in-depth review of its conflict-of-interest policies. She added that the MFA Oversight Committee had expressed specific concerns regarding the current conflict-of-interest policies, and the MFA would be moving forward to address those concerns. Ms. Martin, referring to the memorandum behind Tab 1 of the handout, said that the MFA staff has determined that, as a result both of the legislators' concerns and the recommendations of the committee, perceived gaps in the MFA's conflict-of-interest policies should be identified and resolved. She noted that in a 2009 external audit, the auditors recommended that the MFA "amend or enforce the existing policy regarding disclosure of the equity value of equity interest on the Annual Disclosure Form". Auditors further recommended that the MFA could remove all requirements to disclose ownership percentage and value and, instead, indicate that any investment is assumed to be significant, and employees and board members seeking special consideration might be allowed to present evidence that their investment is inconsequential. The auditors also recommended that if the existing MFA policy is retained, employees and board members should be required to provide complete information.

Ms. Martin said that as a result of the 2009 auditors' recommendations and the recent concerns raised by the MFA Oversight Committee, the MFA staff has drafted a set of proposed policy changes to address inconsistencies in the audit and gaps in the MFA's conflict-of-interest policies. The proposed changes are included in the handout, and Ms. Martin noted that the changes were reviewed by the Sheehan and Sheehan law firm. Major changes are included in the definitions section of the MFA Policy and Procedures Manual, Section 1.2C. The amended language includes adding "domestic partner" in the definition of "Family Member". Additionally, the definition of "Official Act" would be changed to mean "any action taken by an MFA Board Member, Management or Employee that is within her/his capacity to take by virtue [of] her/his position and which constitutes a decision, resolution determination, recommendation, approval, disapproval, or other action that involves the exercise of discretionary authority".

There was a brief discussion by members regarding the proposed changes. The chair and other committee members thanked MFA staff members for their diligence and hard work in addressing the concerns of the individual legislators and the oversight committee as a whole.

Removing Low-Income Housing Tax Credits for Property Taxation Valuation Purposes — Proposed Legislation

Attorney Stephen Natelson, Rick Silva, director, Property Tax Division (PTD), Taxation and Revenue Department (TRD), and Michael O'Melia, deputy director, PTD, discussed proposed legislation that would clarify the treatment of low-income housing tax credits for purposes of property tax valuation of low-income housing property.

On behalf of his client, the developer and owner of El Cerrito Housing LP, a Taos County low-income housing development, Mr. Natelson said the Taos County assessor improperly assessed the El Cerrito low-income housing project by incorrectly considering in his valuation the value of the project's low-income housing tax credits. He noted that current laws and regulations, if interpreted correctly, should prevent an error in assessors' valuations. He argued that because the Taos County assessor improperly assessed his client's property, the legislature should adopt new statutory language for clarification of the existing law or require more stringent enforcement of the current statute. Mr. Natelson further predicted that if nothing is done to reverse the Taos County assessor's opinion regarding the valuation of the property, future low-income housing projects will be in jeopardy because developers will not want to risk developing such projects only to get hit with inflated property tax assessments.

Mr. Natelson asserted that the Taos County assessor failed to apply the provisions of Section 7-36-15 NMSA 1978, which provides that an assessor shall consider "any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant or encumbrance, imposed pursuant to the federal, state or local affordable housing program that restricts the future of the property or the resale price of the property".

Mr. Natelson claimed that the Taos County assessor incorrectly included federal low-income property tax credits in the El Cerrito low-income housing project's property valuation. Therefore, the assessor determined an inflated taxable valuation. The assessor submitted an amended assessed value of the project of $3,182,148 for the 2009 tax year. The property owner asserts the amended value should be $2,167,314. The property owner was unsuccessful in his protest before the Taos County Valuation Protests Board regarding the assessed value of the property by the Taos County assessor. On October 29, 2009, that board found that the property owner "failed to overcome the statutory presumption that the Assessor's valuation of the property is correct".

Mr. Natelson, referring to an October 28, 2010 letter to the MFA Oversight Committee members, labeled Attachment C in the handout, reminded members that he has been working with Representative Gonzales and Senator Rodriguez to draft legislation that specifies the manner in which properties with low-income housing tax credits are calculated for taxation purposes. The proposed legislative changes are located in the handout behind Tab 2, Attachment C.

Committee members asked several questions regarding the valuation process, the current statutory language and the need for amended language. Mr. Silva told the members that he was made aware of this controversy last year. He said the assessor valued the property using the income the property was producing for the basis of the valuation. Mr. Silva opined that the legislature and the TRD do not need to take any steps in the matter until the court that is hearing the case issues an order in the matter. He argued that, because the current statute clearly requires that the valuation should not include the tax credits, no statutory changes are necessary.

Representative Gonzales told the members that he was proposing legislation containing a specific provision that federal income tax credits awarded pursuant to Section 42 of the Internal Revenue Code shall not be taken into account when determining the market value of property for property taxation purposes.

Mr. Natelson informed the members of Regulation 3.6.5.41, adopted in 2008, which provides that low-income tax credits shall not be used in the valuation of the low-income housing properties like that of his client. However, he said, he did not discover the regulation until after the Taos County assessor had determined the value of the El Cerrito property. He also noted that he forwarded the regulation information to the Taos County attorney, who was unfamiliar with the regulation. By that time, the valuation had been completed, and the case was being appealed by the property owner. According to Mr. Natelson, the greatest expense for a developer is the cost of property taxes. Consequently, if an assessor overvalues a property, the tax burden can cause the project to become insolvent.

Joseph Montoya, deputy director of programs for the MFA, advised the members that the TRD looked at the statute in its current form and determined it did not need to be amended. He also offered his personal opinion that the statute was clear and did not need amendment.

Mr. O'Melia advised that the issue is quite complicated. He said that most people seem to agree that the property assessments should be calculated based on market value. He further said that he thinks the Taos County assessor used the information that was available for the valuation. He opined that the county assessor and the property owner need to communicate, and the county assessor needs to be supplied with qualified, audited information. He also noted that property owners need to provide total disclosure to assessors to eliminate tax valuation problems.

Committee members expressed concern over the lack of uniformity in the application of New Mexico's laws concerning property taxes and property tax valuations. Mr. Silva said there should be some type of repercussion for not properly applying the tax laws. Members then asked Mr. Silva if the TRD could do more to provide clarity and guidance to assessors regarding the application of New Mexico's taxation statutes. He responded that the statute is clear and unambiguous. He noted that the TRD manages 33 county assessor offices statewide and does so with a limited staff. He reiterated that punitive measures are needed for not following the tax code. Committee members responded with concern over penalizing elected officials. Mr. Silva agreed that control of elected officials is difficult and noted that until one of the elected officials who fails to follow the tax code properly is removed from office, nothing will likely change. He added that when representatives from the TRD question local assessors, the department "catches heat". In his opinion, when the property tax system in its current statutory form is followed, it works.

Mr. Natelson suggested that the TRD could send an advisory opinion regarding the use of low-income tax credits in the valuation of low-income properties to all 33 county assessors. When asked if the department would consider such a letter, Mr. Silva replied that, to the best of his knowledge, it had already been done. He noted that such an advisory letter should be sanctioned by the attorney general prior to being sent by the TRD.

After determining that more information and another discussion on the issue were needed, the committee declined to support the proposed legislation to amend the statute.

Regional Housing Authority Oversight Expenses — Proposed Legislation

Mr. Montoya spoke briefly regarding the MFA's proposed legislation that would transfer the oversight of the regional housing authorities to the Department of Finance and Administration (DFA). When asked the reason for the proposed legislation, Mr. Montoya explained that the MFA simply does not have the budgetary funds to exercise the duties related to oversight of the authorities. He added that although the duties were given to the MFA, funding has never been received to carry out those duties. He estimated that the MFA needs $250,000 to carry out the oversight duties. He said that the MFA is also proposing an appropriation to the MFA in the amount needed to exercise its oversight responsibilities. Members approved a motion to endorse the appropriation legislation and the legislation proposing to move the oversight authority from the MFA to the DFA.

The committee voted unanimously to approve the minutes from the fifth meeting of the oversight committee held on September 30, 2010.

Adjournment

There being no further business before the committee, the sixth meeting of the MFA Act Oversight Committee for the 2010 interim adjourned at 11:00 a.m.